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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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Services

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DEC 02 2004

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

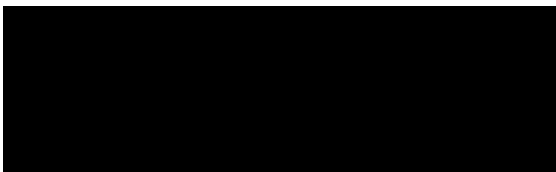
Applicant:



APPLICATION:

Application for Adjustment from Temporary to Permanent Resident Status under
Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C.
§ 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Western Regional Processing Facility, is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant had been convicted of a felony. On appeal, counsel points out that, although the conviction was for a felony, it was later deemed to be a misdemeanor and was set aside. The applicant requests that humanitarian factors be considered.


An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The applicant was convicted of Vehicular Manslaughter, a felony, on February 19, 1988. On appeal, the applicant explains that the conviction arose from an accident in which his children died. He provides a copy of a court order which terminated his probation soon after it was implemented. Counsel furnishes a copy of a court order issued three years after the conviction. The order states that the conviction is deemed a misdemeanor, and is set aside.

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. Any subsequent action which overturns a conviction, other than on the merits of the case, is ineffective to expunge a conviction for immigration purposes. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Pursuant to 8 C.F.R. § 103.3(c), precedent decisions are binding on all Citizenship and Immigration Services officers. Thus, no effect can be given to the reclassification and setting aside of the felony conviction.


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The applicant also asks that, in light of the tragedy, humanitarian considerations be factored into the decision regarding his application. However, there is simply no waiver available for ineligibility due to a felony conviction.

The applicant is ineligible for adjustment to permanent resident status because of his felony conviction. 8 C.F.R. § 245a.3(c)(1).

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.